

The Right to Access to Information and the Democratization of the Communication: The Faces of the Same Currency Called Democracy

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“The right to expression freedom divides into two: it is the right of the Access to information and the right to disseminate and propagate information and opinions”. This is Frank La Rue’s definition, special rapporteur for the promotion and protection of the right to opinion and expression freedom of the United Nations (UN). The concept, released by the seminary Brasil de Fato⁹⁸ on a cover Page, under the title “Unregulated Democracy”, was emitted in the country in an activity organized by the Fórum Nacional pela Democratiza-

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98 Reports made by the journalists Michelle Amaral, Jonas Valente, Leonardo Severa and Vanessa Silva, under the respective titles ‘The freedom of expression of oligopolies’ (‘A liberdade de expressão de oligopólios’), ‘In communication, the trap of the fear’ (‘Na comunicação, a armadilha do medo’) and ‘Misinformation is the war weapon of the Pentagon’ (‘Desinformação é a arma de guerra do Pentágono’).

ção da Comunicação (FNDC)⁹⁹, about the question of the regulatory mark for the Brazilian press. On this understanding, the access to public information, regulated in Brazil by recent legislation, and the right to the democratization of the media, just as the access to the means and to the technology of information, predicted as media regulation, are faces of the same currency. The Law of Access to Public Information (LAI) nowadays is a Brazilian reality established by the law number 12.527/11 after many social struggle, which persisted for a few years, having as a support a few laws and previous decrees.

It is interesting to notice that the legislation has come without resistance from the big media, but by the tough procedure of the civil society; though the articulation for the creation of the Law of Democratic Media has no support of the big press. The Brazilian media market has shown itself resistant in relation to the idea, standing, practically, isolated in the continent.

I. Breaking the silence

Starting from La Rue's presupposition, that the access to information is intrinsically connected to the democratization of the communication, it is needed to remember that the history of the country is marked by the missing of big social claiming movements. Therefore, the education question is priority for that the citizen has consciousness that the access to quality information is a right.

With the regulation of the Law of Access to Public Information (LAI)¹⁰⁰, on May 16th in 2012, it was opened the possibility of breaking with the silence culture which already lasts more than four centuries since the Our Lady Visitation lecture, pronounced on July 2nd in 1640, by the priest Antônio Vieira. On this lecture, the Jesuit preacher welcomes the newcomer viceroy, Marquis of Montalvão, reporting the absence of voice of the 'Brazil-State'. "For Vieira, thus, the biggest of the evils of the diseased Brazil was to be put in the same condition to the infants; this is, without speaking, without voice." (Lima, 2012).

The absence of voice and participation in the country persists since the first half of the 17th century. Since then, the situation has not changed. Brazil is considered a 'Country without nation'¹⁰¹, what means without information, without participation, without unit.

99 La Rue was in Brasília and São Paulo between December 11th and 13th 2012 invited by the Fórum Nacional pela Democratização da Comunicação (FNDC) to participate in the campaign "To Express Freedom" ("Para Expressar a Liberdade"), which claims a new regulatory Mark for the communication in the country.

100 In a few communication means, LAI is also known as LeiInfo.

101 Expression used on the book 'Condições Sociais do Poder Nacional' (1957), by Alberto Guerreiro Ramos.

Inside this scenery, it is interesting to notice, historically, the absence of democracy living, marked by the succession of the colonial heritage, the absence of self-government and the authoritarian government. It is still alive in the nation's memory its own recent repression history, lived between 1964 and 1985 – a true counterpoint to the institution of LAI. The function of the media in both cases was atypical.

The teacher Maria Helena Weber, in her analysis about the period of the coup of 64, affirms the communication “made stronger the Project of the ruling class and generated silences and violence which marked deeply and everlastingly the Brazilian society”. Then, she puts more: “A seductive speech was built, plotted by lines that relativized all the truths and gave life to official truths.” (Weber, 2000: 211).

If the country was already marked by the silence, the repression – with the media collaboration – just intensified the citizen's retraction movement. It is still a neuralgic point for the society, which formed and kept a secrecy culture. Until today, people live as if the rights concession was a kindness act and not an obligation of the State, mainly in what refers to information.

Before demonstrating the acting of the big press in the Law implementation, it is worth giving fast details about LAI's path. The legislation sanction took eight years to transact. The first proposal about the theme was the one of the federal congressman Reginaldo Lopes (PT-MG) to the Chamber of the Congressmen, waiting for six years, when the Executive presented a substitute project, on May of 2009. Envied to the Senate, it was approved by the ending of October 2011. The law was sanctioned on November 18th of the same year and its regulation occurred on May 16th 2012. Though the dates referent to the legal pending, the social groups had already discussed and depth the question since 2000.

During its debate, the main moment, which earned emphasis from the means of communication, was the resistance which came from a small minority in policy class. Although the free access to the information was predicted in the Federal Constitution of 1988, a few politicians, under the allegation of national security commitment, struggled for that a few official information kept classified ultra-secret for an undefined period of time.

In the struggle for its approval, Brazil had a few access law references implanted in other Latin-American countries, coming after the other nations. The first country to have a legal mark about the access to the information was Sweden in 1766. Since this date until it reached the American continent, it took two centuries. In Colombia¹⁰², the first one in South America, its regulation happened in 1985. Mexico, where the law works since 2002, is a worldwide reference.

102 In 1888, Colombia already had approved the Código de Organización Política y Municipal, which predicted the public right to information.

In total, there were 23 years, parting from the constitutional text, to arise a law with the claim of the basic principle be the information transparency and publicization as a rule and the secrecy the exception. While its building process passed by the hands of many social movements¹⁰³, the majority related to transparency and combat against corruption, the law had a warm reception by the side of the big press.

The essence of the law

There are many angles to reach the essence of LAI's value. Among them, being one more instrument for that the journalists can bring to a big focus information about the relations that surround the State, aiming the combat against corruption and the transparency of information. Maybe this power is only a small part, once it is centered on the hands of a category, which will decide what to publish. So, the people are subject to any topic to the information booking, the censure inside the newsrooms and the self censorship – unavoidable inside the media corporation.

The law itself does not bring guaranties of its application or of behavior changes. It is how Novaes describes when he talks about the changes of a reality to another:

...these transformations happen in a unequal way in the amount of human things. While in material life they are fast and visible and affect our everyday lives (...) the same does not happen with the “society fundamental conventions”: the habits, the civil laws, the public right, the concepts, the entities and that that Valéry calls essential myths of the modern world, which are the Ethic, the Policy and the History, which remain almost untouched in the appearances. (Novaes, 2004: 11)¹⁰⁴

Therefore, instead of the decisions keep centered and subordinated to the media, making the citizens spectators of their own destiny, the press main function should be, at this moment, the one of educator. In the media perspective, educating means building and uprising the citizen's critic conscience, overtaking formal atmospheres, as the school and the work place. However, it was just this formation work what missed, mainly, in a country where there are still compulsory education deficiencies.

On the day the law was regulated, the printed news, in online version, O Estadão de São Paulo, known as Estadão, brought in its edition 171 published articles – only one made reference to the law, with basis on critics by the absence of details about how to make asks to have access to the information. There was no service to explain the law, its benefits and

103 Among the social entities, there are the Transparência Brasil (against corruption); Fórum de Direito de Acesso a Informações Públicas (organization's meetings); Contas Abertas (focus in the Union's budget execution); Movimento Brasil Aberto (made pression for the progress of the law Project, stagnated in the Senate); Artigo 19 (expression and information freedom promotion).

104 It refers to the text “The policy of the spirit – our main good” (“A política do espírito - nosso supremo bem”), of the poet and essayist Paul Valéry.

how to put it in practice on the day-by-day of the people (in its digital version there is an explanatory note), making possible for the reader to be the main actor of his history.

However, in a capitalist society, the information is treated as merchandise; so, it has an exchange value, as the teacher Vicente Romano¹⁰⁵ shows:

“In the capitalist society, euphemistically denominated free market society, the information is merchandise, and, in this condition, it has an exchange value determined due to the market laws. The news are made, sold and bought just like any other article. It means that it is produced what is sold, which results profitable and of benefit for the owners of the means of informative and communicative production”. (Romano, 2005: 02)

It is function of the media to inform, what means to enable the access and the comprehension of the speech, but it is worth highlighting that the means of communication are private companies, with explicit profit objects. Romano reminds us that the media is on the big monopolies hands and defund, direct or indirectly, its purposes, principles and programs. “Under the appearance of the objectivity, diversity, independence and impartiality, the means of mass communication centralize and concentrate the ideological manipulation and ensure, this way, the controlling of the ruling class.” (*Ibid*, 2005, p.02)

Once the manipulation occurs, it becomes complex to definite or to measure what is real and to delimit a person’s interest, including to reflect about what is the effect of the information in a person’s life. The media creates distractions too in its communication as a part of the reality distortion scenery. In other words, the media market conducts the social interest. Romano makes it really clear:

“This is the light which lightens all the problems: our interests. If we do not recognize our interests, we do not understand the simplest social links, it will not have worthwhile the hours at school. The interests cannot be recognized if the possibilities are ignored. These know each other thanks to the information. Who decides and selects the information which configure our opinions decides too where our possibilities can reach. Because of it, this group decides too which interest we may identify with.” (Id,1998: 63)

If the interests of the people are targeted and it is decided with what it may (or can) identify, it is right to foresee that there will be chosen which data will be published, with well defined objectives. This way, there come lots of doubts taking the currency faces a possible control weapon. This is a so decisive moment. Not for the media market, but for the human being. In Romano’s definition: “The social being does not change with a manipulated conscience.” (Id, 1998: 155)

105 Free translation by the author of the article.

It is interesting to notice that the detention of the information power was released by the own mean by treating the law, on July 3rd of 2011. The article published under the title “Access to secretive papers is the synonym of power, says Unesco” (“Acesso a papéis sigilosos é sinônimo de poder, diz Unesco”), by the journalist Lucas de Abreu Maia, brings the coverage of the 6^o Investigative Journalism Congress of the Brazilian Association of Journalism (6^o Congresso de Jornalismo Investigativo da Associação Brasileira de Jornalismo Investigativo) (Abraji). By the ending of the lead (the first paragraph of the text), the script of the Unesco representative, Guilherme Canela, gives a demonstration by saying: “Information is power and who has seen the documents has more power than the other citizens”, referring to the secrecy maintenance possibility above a few documents of the State, already handled on the text.

Just to give an example of the citizen importance in his history, Canela reveals in the book he organized, “Políticas Públicas Sociais e os desafios para o Jornalismo”, that the creation of public policies is intrinsically related to the legislation existence, as a first-request, and the detention of information inside a distinct reality.

“As we emphasized, distinct phases on the development of a public policy demand the knowledge of different levels of information (statistics, legislation, positions of many different important points, better practices). The media is a potential investigator and provider of this information, including giving voice to alternative and oppositional sources of official data.” (Canela, 2008: 26)

II. Distorted facts

Trough the campaign “To express the freedom” (“Para Expressar a Liberdade”), released on December of last year, by the Fórum Nacional pela Democratização da Comunicação (FNDC), the organized society searches the building of public policies for the communicational sector. With the pretention of collecting 1,3 million signatures to be forwarded to the Nacional Congress until the end of the year, the social organization developed a proposal of a Law Project of Popular Initiative for the Democratic Media Law institution.

In Latin America, many countries already have their own Media Laws, like Venezuela, Argentina, Bolivia, Ecuador. Uruguay walks to its possible approval by the end of this year. All these cases are treated as Gag Law by the big press. In the country, the Argentinean case with its Ley de Medios, from 2009, is the media’s most explored example, portraying the confusion between the Argentinean government, under the management of the president Cristina Kirchner, and the Clarín group, under the optic of the control of the means of communication.

The theme is treated with restrictions in Brazil, only giving voices to whom who are interested in the question. Thus, the topic is seen by the censoring optic, not guaranteeing to the people the information detention from many voices. What everything indicates is that the main question in the discussion about the creation of a regulatory mark is the privileges maintenance, among them, its concessions.

It is just needed to remember Rede Globo's case. As Weber says, about the station's history, which began in 1957, when the president Juscelino Kubitschek granted a television channel to the officer Roberto Marinho and its activation with businesses with Time-Life Broadcast International Inc., which injured the 160 article of the Brazilian Constitution. Though, it was not only Globo which got benefits with agreements with the government, mainly during the dictatorial period.

As a company, the big journalistic groups grew too, strengthened by the alliances with governmental sectors.[...] the *Jornal do Brasil* (RJ), the *O Estado de São Paulo* (SP), the *O Globo* (RJ), the *Zero Hora* (RS), the *Folha de São Paulo* (SP) and the *Abril* editorial groups (SP) and *Globo* (RJ) modernized their graphic complexes with sophisticated equipments and advertising investments. (Ibid, 2000:177)

The concentration of Brazilian press vehicles in a few hands was also a target of critics of the report "Brazil, the country of 30 Berlusconis" ("Brasil, o país dos 30 Berlusconis"), a reference to the Italian ex-prime-minister, Silvio Berlusconi, owner of a communication empire in Italy. The material was produced by the French nongovernmental organization (NGO) Reporters Without Border (RWB), which defends the press freedom, launched on January 24th of this year. The document is a result of visits to Brasília, São Paulo and Rio de Janeiro, from Benoît Hervieu's investigations, with Luis Gustavo Pacete and Pâmela Pinto, RWB's correspondents in Brazil.

Just in the introduction of the report, the NGO already gives an Idea of the presented material. "The level of media propriety concentration contrasts with the extension of its territory and extreme civil society diversity."¹⁰⁶ (Hervieu, 2013: 03). It points, yet, for that the media market reflects "its relation almost incestuous with the politic and economic centers" and the property concentration, harassment and censoring are characters of a system which was never questioned since the ending of the repression, which lasted until 1985.

The material makes a map of the concentration of the means, mainly localized on the axis São Paulo – Rio de Janeiro, by means of ten groups, making weaker regional and communitarian medias. Starting from this point, having as a basis Weber's argumentation, it is able to affirm that there is "the construction of a Brazilian way of being", (Ibid, 2000: 177), by a homogeny speech. The magazine *Brasil de Fato*, already, presents the country

106 Free translation of the report by the author of the article.

has 9.477 communication vehicles – four big national groups¹⁰⁷ control different Medias, making the situation even more critic.

According to the report, the actual Brazilian Telecommunications Code (Código Brasileiro das Telecomunicações) (CBT), the only legislation of the sector, completed 50 years in 2012 and is considered a law for a Brazil of other times. This way, including the extinction in 2009 of the Press Law, from 1967, there stands a hole in what refers to the media market. By the ending of the report, the NGO makes a few recommendations. Among them: “The new legislation may include strong clauses about media and funding means property through state advertising” (Ibid, 2013: 26).

107 According to the weekly paper Brasil de Fato, the four conglomerates are the Rede Globo de Televisão, which has 340 vehicles; the Sistema Brasileiro de Televisão (SBT), which has 195; the Rede Bandeirantes de Televisão, 166; and the Rede Record, 142.

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